CHAPTER 4

GATS AND TRADE IN HIGHER EDUCATION SERVICES

“The services sector has been a major and vital force steadily driving growth in the Indian economy for more than a decade. The economy has successfully navigated the turbulent years of the recent global economic crisis because of the vitality of this sector in the domestic economy and its prominent role in India’s external economic interactions”  

(Economic Survey, 2011-12)

4.1 Introduction

Education is the single most important factor in improving practical skills, in raising productivity and production, and thereby, additional income and wealth (Ansari, 1987). It increases the innovative capacity of the economy which brings new knowledge, new technologies, product and processes that promotes economic growth (Hanushek & Wobman, 2010). Educational activities, thus, involve the production and distribution of knowledge. This knowledge has implications in all the aspects of human relations. However, it is the economic aspect that makes education tradable. Traditionally, education has been treated as social services but in present times, there is a paradigm shift in education from services to business education (Amin, 2008).

Most of the services are defined as value additions (Bhagwati, 1984). But education as a service\(^1\), which not only adds value but also creates value in economic activity (Bhagavatula, 2002). In the present era of globalization and in the WTO regime, education is a service that can be traded through different modes\(^2\) recognised under General Agreement on Trade in Services (GATS). Trade in education services is already a major business in some countries. Global trade in higher education is large; it is estimated at more than $30 billion per annum (OECD, 2004) and hence many industrialists and governments see a great market opportunity in education and want it to be liberalized for trade.

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1 The constituent of service sector are Business services, Communication services, Construction and related Engineering services, Distribution services, Educational services, Financial services, Health-related and Social services, Tourism and Trade related services, Recreational, Cultural and Sporting services, Transport services and other services not included elsewhere.

2 Under GATS, there are four different modes: Cross-border supply, Consumption abroad, Commercial presence and Movement of natural persons in which services are traded.
Education has become one of the single largest service sectors in terms of shares in gross domestic product (GDP) and employment, in many economies worldwide. It not only provides the bulk of employment and income in many countries but also serves as vital input for producing other goods and services (Raychaudhuri & De, 2008). Considering the importance of services at the global level, GATS was formulated in 1995. It is the first set of international rules for the international trade in services. It not only aims at stimulating trade and development but also lends credibility and reliability to the system of international trade (Burange et al., 2009).

Service\(^3\) sector represents the fastest growing sector of the global economy and currently account for 71 per cent of global gross domestic product in 2010\(^4\) and it is expanding at a faster rate than agriculture and the manufacturing sectors. In line with the global trend, service sector in India has also grown rapidly in the last decade. Today, in India, the service sector is the single largest sector, accounting for more than 56 per cent of domestic production. It has not only made waves in the domestic economy, but also managed to make its presence felt in the external trade of the country. India has emerged as one of the top-most countries in export and import of services. Thus, this sector has become the most dynamic segment of international trade and has played an important role in economic growth both at national and global level.

To understand the nature of education services, it is important to know the rule based multilateral trading system in service. Hence, this chapter deals with a brief overview of multilateral trading system. A short description is given about the General Agreement on Tariffs and Trade (GATT) and its transformation into the World Trade Organization (WTO), depicting some of their main differences. Further, trade in services has been analysed keeping in view of its contribution to the global and national economy. Then, it follows a brief description of the General Agreement on Trade in Services (GATS) and its main rules and principles. Finally, the closing section is devoted to discuss India’s higher education under GATS.

\(^3\) Services can be characterized as “an act or action, such as work rendered or performed for another” (August, 2000, p.418)

4.2 From General Agreement on Tariff and Trade (GATT) to the World Trade Organization (WTO)

The General Agreement on Tariff and Trade (GATT) came into force on 1 January 1948 with 23 founding members to manage international trade through a multilateral trade agreement, aimed successively at liberalization of trade and decrease in tariffs for import and export of industrial goods in order to develop a world market based on the principles of free trade (Tilak, 2011). The main aim of GATT was to promote world trade by reducing custom tariffs and other impediments to trade as they have contributed substantial barriers for further economic growth. GATT continued its efforts to reduce further tariff through a series of negotiations as “Trade Rounds”.

Since 1947, there have been eight rounds of trade negotiations among the member countries. The first five GATT trade rounds focussed mainly on reducing the tariffs. It was for the first time in the Kennedy (1962-67) GATT trade round that a new subject called anti-dumping measures was brought up. The seventh, the Tokyo Round which lasted six years (1973-79), was the first major attempt to handle those trade barriers, which were not tangible in form of tariffs. The eighth, the Uruguay Round, was the last and most extensive of all. It represents the biggest negotiating mandate on trade that has ever been agreed. The agenda included strengthening the rules of the trading system, improving ways to address non-tariff measures, bringing agricultural products, textiles and clothing under the multilateral trade rules, addressing trade in services5, anti-dumping, market access and protecting intellectual property rights etc. It was also the longest negotiation round due to disagreement over issues such as agriculture, services and textiles. The result was ultimately 60 agreements and decisions on more than 500 pages (Vlk, 2006). Thus, Uruguay Round represents largest trade negotiations ever, and the largest negotiation of any kind in history.

The inclusion of services in the international trade negotiations was fostered by various developed countries in the Uruguay Round, which was the last round of

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5 For details how services became embedded in the trade mechanisms see for example Drake & Nicolaidis (1992).
negotiations under the GATT regime (1986-1993)\textsuperscript{6} and led to the creation of the World Trade Organization (WTO) on 1 January 1995 and India became a founder member of WTO, by ratifying the WTO agreement on December 30, 1994 (the membership of WTO up to 2 March 2013 was 159\textsuperscript{7}).

WTO is the GATT plus a lot more. The GATT dealt only with trade in goods while, WTO is a new international organization set up as a permanent body dealt with trade in services and intellectual property as well. One of the most important differences between the GATT and WTO is the Dispute settlement mechanism (DSM). Under GATT, countries were allowed to lodge complaints against other countries for violating the rules. Then an expert report was issued deciding upon the matter of the complaint. If the report was unanimously agreed by GATT members, then the offending party were required to either change its behaviour or was subject to sanctions. This mechanism in fact gave every country a veto over the decision. Under the WTO dispute settlement the procedure mechanism is different. A unanimous decision is required in order to block an expert report. Therefore, the DSM became much more effective and made even large countries such as the United States go to the WTO panel with its most important complaints (Deardorff & Stern, 2002). Thus, the DSM of the WTO is stronger than one in the (GATT) that it replaced.

WTO is the only international body dealing with the rules of trade between nations. At its heart are the WTO agreements, which have three main objectives: (1) to help trade flow as freely as possible; (2) to achieve further liberalisation gradually through negotiations; and (3) to set up an impartial means of settling disputes. The WTO has introduced a Trade Policy Review Mechanism, whose objective was to facilitate the smooth functioning of the multilateral trading system by enhancing the transparency of members’ trade policies and practices\textsuperscript{8}. Thus, the WTO can be described as a forum of countries to negotiate trade agreements, settle trade disputes and other issues on trade, embedded in a multilateral trading system (Hoekman & Kostecki, 2009).

\textsuperscript{6} The next round of negotiations, familiarly known as the Doha Round (and Doha Development Agenda), that began in 2000 was still in progress in 2011. A round is defined to have been concluded if all members submit their definitive lists of offers that will be integrated in the GATS as a part of the new liberalization commitments.
\textsuperscript{7} Retrieved from www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm
\textsuperscript{8} Retrieved from www.wto.org/english/tratop_e/tp_int_e.htm
WTO is based on the principles of non-discrimination, free trade and promotion of fair competition among the member countries. About 95 per cent of the global trade is governed by the rules and regulations of WTO. The trade operations of WTO are organized into three major groups: goods, services, and intellectual property rights. With the increased importance of the service sector in the world economy, the member countries of the WTO agreed to sign the GATS, which treat services as a matter for international trade on par with merchandise trade. The WTO framework allows trade in goods through the GATT (1994); the GATS, which emerged in 1995, focuses on trade in services; and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), which followed in 1996, seeks to promote trade in intellectual property rights. All three agreements—GATT, GATS, and TRIPS—are multilateral and constitute integral agreements of the WTO. All members of WTO must implement all three agreements as long as they remain as members (Tilak, 2011).

4.3 Trade in Services

Trade in services has become the most dynamic segment of international trade. International trade in services has become more important in recent years, as advances in technology have permitted new means of providing services across borders. While there is little doubt that services trade is an essential ingredient to economic growth and sustainable development, it is widely accepted that it can only make such positive contribution if appropriately liberalised and implemented across countries (Copeland and Mattoo, 2008). The World Bank predicts that developing countries are to gain from liberalization of trade in services around $6 trillion between 2005 and 2015 (Arkell, 2003).

The importance of services sector can be judged from international trade in commercial services given in Table 4.1. Further, figure 4.1 and 4.2 shows world as well India’s trade in services. In 1980, world total commercial services exports were US$ 395.7 billion which increased by 11 times to a huge amount of US$ 4243.3 billion in 2011. Commercial services imports increased by 9 times from US$ 447.8 billion to US$ 4081.9 billion in the above said period. Likewise, India’s commercial services exports increased by 46 times from US$ 2.97 billion in 1980 to US$ 137.1 billion in 2011 while commercial services imports increased by 42 times from US$
2.98 billion to US$ 124.6 billion in the above same year. The above data shows that, India’s services exports grew faster than global services exports. However, India’s services export growth has also been faster than that of merchandise exports with the export of services growing at a CAGR of 23.6 per cent during 2001-12, while merchandise exports grew at a CAGR of 21.4 per cent during this period (Economic Survey, 2012-13). Due to such rapid growth in services exports, India has succeeded in raising its penetration in global markets more rapidly for services than for goods. India is in a good position in the league of service exporters among the developing countries. Its services has been growing rapidly since beginning of the last decade, following significant domestic liberalization on one hand, and access to a growing overseas market for services, on the other hand. India’s ‘services revolution’ has been supported by deregulation of services sectors (Ghani and Kharas, 2010). Growing openness and integration has helped India’s services export. Knowledge-based segments have been prominent among the faster growing services sectors, assisted by technological advances and a low-cost educated workforce with good English language capabilities (De, 2010).

In India, services sector have emerged as crucial economic activities in recent past. For the period 1980-2011, India’s services exports grew at a compound annual growth rate (CAGR) of 14.29 per cent, while world exports of services have grown at the rate of 8.53 per cent only. Substantial part of this growth in India has been in the post-globalization period (1992-2011) i.e., 21.27 per cent. Similarly, India’s services imports grew at a CAGR of 12.98 per cent and world imports of services have grown at the rate of 7.92 per cent. In the 1980s and 1990s, India had a negative trade balance in services but from 2004 onwards, it has a positive trade balance in services because its services exports have been higher than services imports (see Appendix 4.1). In 2011, India was the eighth largest exporter and seventh largest importer of services at the global level.9 This shows that India has maintained a good position in the league of service exports and imports. In recent years, the demand for India’s services exports in global market has led to an increase in India’s trade surplus in this segment.

India’s share in world export of services has increased from 0.75 per cent to over 3.23 per cent from 1980 to 2011 and its share in world imports also increased

from 0.66 per cent to 3.05 per cent during the same period. Likewise, India’s share in developing countries exports and imports of services has increased from 4.04 per cent to 10.83 per cent and from 2.13 per cent to 8.40 per cent during 1980-2011. Presently it is seen that services generate more wealth and employment than any other sector of the economy. In some developing countries, services accounted for 50 per cent of GDP and employment while in a number of developed countries this rises to 70 per cent (UNCTAD, 2000).

**Figure 4.1: Trade in Services in the World**

Source: Computed on the basis of data given in Appendix 4.1.

**Figure 4.2: Trade in Services in India**

Source: Computed on the basis of data given in Appendix 4.1.
<table>
<thead>
<tr>
<th>Year</th>
<th>World Export</th>
<th>World Import</th>
<th>Developing Economies Export</th>
<th>Developing Economies Import</th>
<th>India Export</th>
<th>India Import</th>
<th>Share in world Exports (%)</th>
<th>Share in world Imports (%)</th>
<th>Share in Developing Economies Exports (%)</th>
<th>Share in Developing Economies Imports (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>395,659</td>
<td>447,772</td>
<td>73,389</td>
<td>139,580</td>
<td>2,971</td>
<td>2,981</td>
<td>0.750899133</td>
<td>0.665741</td>
<td>4.048290616</td>
<td>2.13569279</td>
</tr>
<tr>
<td>1985</td>
<td>411,200</td>
<td>443,700</td>
<td>80,500</td>
<td>129,200</td>
<td>3,384</td>
<td>3,903</td>
<td>0.822957198</td>
<td>0.879648411</td>
<td>4.203726708</td>
<td>3.020897833</td>
</tr>
<tr>
<td>1990</td>
<td>830,236</td>
<td>877,742</td>
<td>150,390</td>
<td>193,761</td>
<td>4,625</td>
<td>6,090</td>
<td>0.55707052</td>
<td>0.693826</td>
<td>3.075337456</td>
<td>3.14304736</td>
</tr>
<tr>
<td>1995</td>
<td>1,221,300</td>
<td>1,245,500</td>
<td>273,300</td>
<td>335,400</td>
<td>6,774</td>
<td>10,267</td>
<td>0.554654876</td>
<td>0.824327579</td>
<td>2.478594951</td>
<td>3.061121049</td>
</tr>
<tr>
<td>2000</td>
<td>1,521,680</td>
<td>1,515,961</td>
<td>350,998</td>
<td>415,182</td>
<td>16,685</td>
<td>19,188</td>
<td>1.096485463</td>
<td>1.265732</td>
<td>4.75358834</td>
<td>4.62158764</td>
</tr>
<tr>
<td>2005</td>
<td>2,563,438</td>
<td>2,467,444</td>
<td>629,352</td>
<td>700,428</td>
<td>52,527</td>
<td>47,287</td>
<td>2.049084082</td>
<td>1.916437</td>
<td>8.346203714</td>
<td>6.75115786</td>
</tr>
<tr>
<td>2010</td>
<td>3,834,989</td>
<td>3,685,107</td>
<td>1,137,766</td>
<td>1,298,742</td>
<td>123,762</td>
<td>116,842</td>
<td>3.227180052</td>
<td>3.170654</td>
<td>10.87763213</td>
<td>8.99655205</td>
</tr>
<tr>
<td>2011</td>
<td>4,243,259</td>
<td>4,081,900</td>
<td>1,265,634</td>
<td>1,482,159</td>
<td>137,149</td>
<td>124,566</td>
<td>3.232161883</td>
<td>3.051667</td>
<td>10.83638714</td>
<td>8.40436148</td>
</tr>
</tbody>
</table>

**Source:**

(a) UNTACD: Handbook of Statistics (2012).

“India stands out for the size and dynamism of its services sector. The contribution of the services sector to the Indian economy has been manifold: 55.2 per cent share in gross domestic product (GDP), growing by a 10 per cent annually, contributing to about a quarter of total employment, accounting for a high share in foreign direct investment (FDI) inflows and over one-third of total exports, and recording very fast (27.4 per cent) export growth through the first half of 2010-11.”

The importance of services sector is increasingly reflected in the policy agenda- ranging from liberalization to promotional efforts to regulation at national and international levels (De, 2010). The international trade in services have been dominated by the developed countries on account of their competitiveness’ in services germinated through the candy provided by their respective governments. Whereas the share of developing countries had hitherto been of meagre one, but with the onset of liberalization through the unilateral, bilateral, regional block and sizeably by ratifying the multilateral agreements under the GATS ambit, it is deduced that developing countries have potential to make their presence felt in global trade and investment in services. From development perspective, the GATS are one of the most important agreements in the WTO. The agreement regulates the cross-border flow of trade and investment in services and provides important opportunities for developing countries (Karim, 2007). Moore (2000), the former Secretary General to the WTO, highlights that trade liberalization fosters economic growth and therefore brings immense benefits to the people of the world. He adds that it does not hold true that poor countries would be better off if there were less trade and less foreign investment (Vlk, 2006).

4.4 The General Agreement on Trade in Services (GATS)

“The agreement of trade in services reached in Uruguay Round is perhaps the most important single development in the multilateral trading system since the GATT itself came into effect in 1948.”

The GATS is a set of multilaterally agreed, legally enforceable rules and disciplines ever negotiated over international trade in services. Negotiations on services cannot be carried out in watertight compartments as they can be in other

sectors of WTO. It includes sector-specific negotiations where each sector is separately negotiated for market access by the member countries. Previous international trade agreements covered in products, but never services. GATS is the first legal trade agreements which focuses exclusively on trade of services-as opposed to trade of products (Knight, 2002). In 1995, the WTO replaced GATT and The General Agreement on Trade in Services (GATS), covered in the WTO and also a product of the Uruguay Round, came into force, with the cooperation of 144 member countries. The major powers behind this were USA, Japan, Canada and European Union. The GATS, plus other regional trade agreements, are testimony to the increased emphasis on trade and the market economy in this era of globalization (ibid). GATS define ‘supply of a service’ as to include the production, distribution, marketing, sale and delivery of a service. This has opened the door to the prospect of free trade in educational materials and services, and the marketing of higher education across borders (Dang, 2011). The GATS was inspired by essentially the same objectives as its counterpart in merchandise trade, the GATT: creating a credible and reliable system of international trade rules; ensuring fair and equitable treatment of all participants (principle of non-discrimination); stimulating economic activity through guaranteed policy binding; and promoting trade and development through progressive liberalization.

As stated in its Preamble, the GATS is intended to contribute to trade expansion “under conditions of transparency and progressive liberalization and as a means of promoting economic growth of all trading partners and the development of developing countries” (Karim, 2007). The most explicit and important references to the specific interests of developing countries appear in Articles IV and XIX. Article IV is intended to facilitate increasing participation of developing countries in world trade by providing for negotiation of specific commitments on: a) Access to technology on a commercial basis; b) Improved access to distribution channels and information networks; and c) Liberalisation of market access in service sectors and modes of supply. Articles XIX provide flexibility for developing countries to pursue

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12 GATS’ article 18, quoted in Spring 2009, p.84.
their own development priorities and to open fewer sectors or to liberalise fewer types of transactions in further negotiations.\footnote{14}

As the GATS are an integral part of WTO, member countries of WTO are also member countries of GATS, and they have no option about this. Since the GATS is a general agreement, however, it cannot be operationalized unless the member countries make specific commitments on access for sector-wise and mode-wise trade in their respective national markets, as described below. Countries are free to decide which services are to be offered and under which mode, and which services are not to be offered at all. A country can set limits sector by sector and mode by mode with regard to market access and the nature of its commitments (Tilak, 2011). Once made, however, the commitments are binding: obligations must be strictly adhered to, and the liberalization process has to be progressive and will also turn out to be irreversible. Since unbinding is difficult, the commitments are ‘virtually guaranteed conditions’ for foreign service providers (Wallach, 2005). Further when a commitment is made, it is understood to be minimum treatment, mean that a country can subsequently offer better treatment to foreign providers, but not worse (Tilak, 2011).

The scope and coverage of the GATS are extremely wide; they cover all measures affecting trade in services; all levels of government, including non-governmental organizations if they are exercising delegated powers (Article 1-3-a-i, ii); all actions of the government, including promotion, protection, and regulation; and all areas of services which are provided on a commercial basis, except those sectors which are supplied in the exercise of governmental authority. In September 1998, in a background note, the WTO secretariat proposed that as long as governments acknowledge the existence of private providers in education, education can be treated as commercial services and therefore must be regulated within the WTO framework. The proposal was approved in 1999, and education services were included in the negotiations on new services, which began in January 2000. The Doha Declaration (2001) reaffirmed this stance, and key dates for negotiations were set (see

\footnote{14} Retrieved from www.policy.hu/sodnomtseren/Globalization,%20WTO%20and%20Higher%20Education.PDF
\footnote{15} All articles referred to here are from WTO (2003a, b).
The GATS covers 12 major internationally traded service sectors in its purview, which are further subdivided into a total of some 161 sub-sectors. The main service sectors include: 1) Business services (including professional services and computer services) 2) Communication services 3) Construction and related engineering services 4) Distribution services 5) Educational services 6) Environmental services 7) Financial services (including insurance and banking) 8) Health-related and Social services 9) Tourism and Travel-related services 10) Recreational, cultural and sporting services 11) Transport services 12) Other services not included elsewhere. Out of the twelve basic and miscellaneous service sectors identified under GATS schedules, educational services constitute an important sector. It covers educational services in all member countries whose education systems are not provided exclusively by the public sector.

The GATS provides legal rights to trade in all services. GATS consist of three parts:

- The framework, containing the general principles and rules.
- National schedules, which list a country’s specific commitments on access to their domestic market by foreign providers.
- Annexes, in which specific limitations for each sector can be attached to the schedule of commitments.

4.5 The Principal Elements and Rules of GATS

The overall framework of GATS contains a number of general obligations applicable to all trade in services. These are called unconditional obligations, which are applicable to automatically to all member countries, notably including most-favoured nation treatment, principles and procedures related to transparency. These two unconditional obligations are not subject to negotiation and together are known as the “top-down rules” because they apply to all members of WTO and to all 12 categories of services regardless of whether a country has made a specific commitment to sectors or not (Tilak, 2011). Each WTO member lists in its national...
schedules those services for which it wishes to provide access to foreign providers. In addition to choosing which service sector (or sectors) will be committed, each country determines the extent of commitment by specifying the level of market access and the degree of national treatment they are prepared to guarantee. These are known as the “bottom-up aspects” of GATS, because individual countries are making these decisions (Knight, 2002a). Table 4.2 summarizes the key elements\(^\text{18}\) and rules of GATS.

### Table 4.2: Key Elements and Rules of GATS

<table>
<thead>
<tr>
<th>GATS Elements/ Rules</th>
<th>Explanations</th>
<th>Application</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Coverage</strong></td>
<td>All internationally traded services are covered in the 12 different service sectors (e.g., education, transportation, finance, tourism, health, culture, communication, construction)</td>
<td>Applies to all services, with two exceptions: 1) service provided in the exercise of governmental authority; and 2) Air Traffic rights.</td>
</tr>
<tr>
<td><strong>Measures</strong></td>
<td>All laws, regulations and practices from national, regional or local government that may affect trade.</td>
<td>A generic term that applies to all sectors</td>
</tr>
<tr>
<td><strong>Unconditional Obligations (“Top Down”)</strong></td>
<td>Four unconditional obligations exist in GATS: - Most Favoured Nation (MFN) Treatment - Transparency - Dispute Settlement - Monopolies</td>
<td>Apply to all 12 service sectors regardless of whether a country has a scheduled commitment or not.</td>
</tr>
<tr>
<td><strong>Most Favoured Nation (MFN) Treatment</strong></td>
<td>Requires equal and consistent treatment of all foreign trading partners. Under GATS, if a country allows foreign competition in a sector, equal opportunities in that sector should be given to service providers from all WTO members. This also applies to mutual exclusion treatment. For instance, if a foreign provider establishes a branch campus in a country A, then Country A must permit all WTO members the same opportunity/treatment. Or if country A chooses to exclude country B from providing a specific service, then all WTO members are excluded.</td>
<td>May apply even if the country has made no specific commitments to provide foreign access to its markets. Exemptions, for a period of 10 years, are permissible.</td>
</tr>
</tbody>
</table>

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| **Transparency** | Requires that member countries publish all measures that affect services, inform the WTO about changes and respond to any request from other members concerning information about any changes. | Applies to all sectors and all countries. |
| **Conditional Obligations (“Bottom Up”)** | The following conditional obligations are attached to national schedules:  
- National Treatment  
- Market Access | Applies only to commitments listed in national schedules. The degree and extent of obligation is determined by country. |
| **National Treatment** | Requires equal treatment for foreign providers and domestic providers. Once a foreign provider has been allowed to supply a service in one’s country, there should be no discrimination in treatment between the foreign and domestic providers. | Applies only where a country has made a specific commitment. Exemptions are allowed. |
| **Market Access** | Means the degree to which market access is granted to foreign providers in specified sectors. Market access may be subject to one or more of six types of limitations defined by GATS. | Each country determines limitations on market access for each committed sector or determines whether to make a commitment to all. |
| **Progressive Liberalization** | GATS has a built in agenda which means that with each round of negotiations there is further liberalization of trade in service. This means more sectors are covered and more trade limitations are removed | Applies to all sectors and therefore includes education. |
| **Bottom-up and Top-down approach** | Bottom up approach refers to the fact that each country determines the type and extent of its commitments for each sector.  
Top down approach refers to the main principles and obligations as well as the progressive liberalization agenda, there will be increasing pressure to remove trade barriers. |  |

Source: Knight, 2006.

### 4.5.1 Basic Principles of GATS

**The Request and Offer Rule:** implies that each member country will have to make a request offer for a particular service in which it wants to make an agreement, i.e., it is up to the member country, to decide which service sector it would like to bring under the GATS rule.
Article-(II): Most Favoured Nation Treatment (MFNT) is a basic obligation, which states each member “shall accord immediately and unconditionally to services and service suppliers of any other member treatment no less favourable than that it accords to like services and service suppliers of any other country”\(^{19}\). This is considered the central pillar of the GATS. It implies there should be no discrimination between the members to the agreement. All the countries should be treated equally under GATS rule. The principle is ‘favour one favour all’\(^{20}\). For instance, if a foreign education provider establishes branch campus in country A, then country A must permit all WTO members the same opportunity/treatment.

Article-XVII: National Treatment: rule implies that foreigners and nationals need to be treated equally. There should be no discrimination between any member country and the domestic service provider i.e., local and foreign institutions should be treated equally. Differential and discriminatory treatment to foreign educational institutions in comparisons to domestic educational institutions will be unfair and against GATS (Bolasheetty, 2005). The principle is applicable only when a country has made a specific commitment to allow foreign service providers access to its service market. It implies elimination of \textit{de jure} and \textit{de facto} discrimination. For e.g., if private educational institutions in the country are given direct or indirect subsidies by the government, foreign institutions must be given the same subsidies\(^ {21}\) (Tilak, 2011).

Article-XVI: Market Access implies that “each member shall accord services and service suppliers of other member’s treatment not less favourable than that listed in its GATS schedule” (August, 2000). It simply means that each member country should treat all the foreign services equally (equally in terms of access to domestic market). Each country determines limitations on market access for each committed sector and lists in its national schedules those services for which it wishes to provide access to foreign providers. In addition to choosing which service sector/s will be committed, each country determines the extent of commitment by specifying the level of market access and the degree of national treatment they are prepared to guarantee. Thus, Provisions in Article XVI relating to market access refer to progressive liberalization


\(^{21}\) In most countries, private institutions have to meet certain conditions if they are to receive state subsidies. The same conditions may apply to foreign institutions.
and removal of barriers in accessing markets. No barriers to market access are allowed which hinder the entry of foreign service providers into domestic markets. Limitations that may be introduced (or eliminated) under market access include limitations on 1) the number of service providers, 2) the total value of transactions, 3) the total number of service transactions or total sum of service production, 4) the total number of natural persons who may be employed in a sector or by specific supplier, 5) the specific type of legal form or personality of suppliers, 6) the extent of foreign capital involved, and 7) the establishment of specific percentages of participation for foreign capital or the total value of foreign investments 22 (Tilak, 2011).

**Article –III: The Rule of Transparency**: says that, all policies, terms and conditions, including limitations and restrictions, must be transparent. Transparency calls for “members to publish their regulations affecting trade in services, that they notify the Council for Trade in Services of any relevant changes, and that they respond promptly to requests for information from other members” (August, 2000). Thus, service suppliers are guaranteed access to information on laws, regulations and rules related to trade in services (Tilak, 2011).

**Article- XIX: Progressive liberalisation** states that “… members shall enter into successive rounds of negotiations… with a view to achieving progressively higher levels of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services…” (Vlk, 2006). The process of progressive liberalisation involves two aspects: a) extending GATS coverage to more service sectors and b) decreasing the number and extent of measures that serve as impediments to increased trade. Therefore, in spite of each country’s right to determine the extent of its commitment, with each new round of negotiations, countries are expected to add sectors or sub-sectors to their national schedules of commitments and to negotiate the further removal of limitations on market access and national treatment (Knight, 2004).

### 4.6 Educational Services

Education being one of the largest services was included in GATS. It accounts for US$2 trillion dollars of the work economy each year. The aim of GATS is to

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22 There are also many limitations that are listed in the GATS regulations as ‘forbidden’. See Wallach (2005).
liberalize and increase international trade in education. Although higher education has been ‘internationalized’ for a very long time, now globalization and the extension of the GATS to the education sector have considerably modified the environment in which higher education establishment must function. In a climate characterised by the growing mobility of persons, capital and knowledge as well as by a sharp increase in the demand for higher education, new information and communication technologies are today creating opportunities to broaden the market of education services\(^{23}\).

Education like health is a public service and mostly in all countries both these services are provided by the state. However, if we read the GATS Articles related to Market Access, National Treatment, Most Favoured Nation Treatment and Progressive Liberalization, it creates an impression that the GATS will force countries to liberalize their public services i.e. health and education. But this may not be the case (Bhagavatula, 2002). The GATS rules are applicable only on those areas, which has a commercial purpose. As per the Article 1.3 of the GATS\(^{24}\), the services which are entirely provided by the government authority or funded by the government do not fall within the GATS rule. But when the services are provided either by the government partially or some prices are charged as happens in education where some fees is charged, or it is provided by the private providers then, it comes under GATS. There are private service providers that co-exist alongside the public services and are supplied on a competitive basis, which makes a service sector under the GATS. The GATS does want liberalisation to take place but with due respect for national policy objective. The demand for education in the developing countries is increasing and this provoked the member countries to liberalize education services so that the private service suppliers could play a progressive role in the country. But, if a country believes that a certain type of education will have a negative impact on the society then it has the right not to encourage it by not offering any specific commitment in


\(^{24}\) The GATS applies in principle to all services sectors, with two exceptions, Article1 (3) of the GATS excludes “services supplied in the exercise of governmental authority”. These are services that are supplied neither on a commercial basis nor in competition with other suppliers. Cases in point are social security schemes and any other public service, such as health or education that is provided at non-market conditions. Further, the Annex on Air Transport services exempts from coverage measures affecting air traffic rights and services directly related to the exercise of such rights (WTO- The GATS: Objectives, Coverage & Discipline). Retrieved from http://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm
that sector. However, the point is clear that, no country can be forced to liberalise their public services.

GATS framework is based on the competition policy which desires to foster of the competitive market and the removal of control. GATS expand export potentials of education services by internationalizing curricular, by making it relevant and through measures which promote the competitive strength of the education providers, colleges, universities and technical and professional institutions (NIEPA, 2004). The idea behind this is the creation of an open global market place where services like education can be traded to the highest bidder.

4.7 Educational Categories and Modes of Trade

There is a two way classification of trade in educational services. First trade in education is organised into five categories. These categories are based on the United Nations Provisional Central Product classification (CPC)25.

- Primary education, covering preschool and other primary education services, but excluding child care services;
- Secondary education, including general higher secondary, technical and vocational secondary and technical and vocational services for disabled;
- Higher education, covering post secondary technical and vocational education services as well as other higher education services leading to university degree or equivalent;
- Adult education covers education for adults outside the regular education system;
- Other education; which covers all other education services not elsewhere classified; nonetheless education services related to recreation matters are not included

The general procedure of commitment under GATS is that “countries submit their schedules under five sub-sectors of education and four modes of supply of

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education”\textsuperscript{26}. It must be understood that GATS does not make it mandatory for member countries to open up all the educational categories. In fact, one can reject opening up of all categories. Based on a country’s assessment about progressive gains, specific categories can be opened up. For example, countries that are substantially dependent on trade have already open up all categories. These include some of the East-European countries and New-Zealand. Larger economies such as United States have so far committed to opening up of Adult Education and other education categories and there are many other countries which have not made any commitment yet (Deodhar, 2001).

The second classification is based on the nature of trade in educational services. Article 1.2 of GATS classifies trade into the following four ways.

4.7.1 Modes of Trade in Services

Under the GATS, there are four ways in which a service can be traded. These are known as “modes of supply”. These four modes apply to all 12 of the services sectors. These sectors are further sub-divided into a total of some 161 sub-sectors. The four modes of supply are summarized in Table 4.3.

Mode I: “Cross Border Supply” which is defined as the supply of a service from the territory of one member country into the territory of any other member country. Under this mode, there is no physical movement of the sellers or consumers, but the service itself travels. Such form of trade in services includes any kind of course that is provided through distance or virtual education programmes through mail, telephone or television, online courses through internet (e-learning), educational testing services, and educational materials which can cross national boundaries. It will also include sale of paperback editions of books and sale of educational CD-ROMs and DVDs. It has a great future under the GATS because it is the product of latest advancement in Information and Communication Technologies (ICTs), especially the internet. Thus Mode 1 is characterised by mobility of the programme, rather than of the sellers or buyers.

Mode II: “Consumption Abroad” The second form of trade in the service is the kind, where there is the movement of the students from their home country to any

\textsuperscript{26} WTO Education Services, Background Note by the Secretariat, 23rd September, 1998. Retrieved from http://www.wto.org
foreign country to consume education. It is the consumer, not the seller, who moves to another country to consume the given service. A clear e.g. is that of Indian students studying abroad and spending on educational fees and all related expenses of their stay. Currently this mode represents the largest share of the global market for education services and is growing.

**Mode III: “Commercial Presence”** which is defined as the, supplier of education service mover to any other member country to supply its service under certain regulations. This kind of supply of education could be through establishment of offshore campuses or through twinning or franchising programmes or setting up branch campuses in collaboration with the host country or partnership agreement with institutions in the host country. For e.g., a foreign university may start a school of journalism in India, giving a foreign degree to the students (Deodhar, 2001). According to Knight (2006), franchising, twinning, double/joint degrees and various articulation models are the more popular methods of cross-border program mobility (Appendix 4.2). There are different forms of cross-border provider mobility (Appendix 4.3).

**Mode IV: “Presence of Natural Persons”** which is defined as a temporary cross border movement by service providers in individual capacity or as a part of an establishment to provide the service overseas. This refers to movement, generally temporary, of service providers such as software professionals, engineers, doctors, scientists, advisors etc. (Tilak, 2011). In case of education, movement of teachers and educational administrators go abroad to provide their education services to foreign students. For example, Indian teachers going abroad to teach in the universities/colleges located in another country. However, the demand for experienced teachers and professors and the successful personalities to provide their services across the borders has increased. So, it can be said that trade through the presence of natural persons will increase.

Thus, all four modes are considered important for trade in educational services and it is given in Table 4.3.

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27 This mode can be referred to as mobility of persons.
Table 4.3: International Higher Education under the GATS

<table>
<thead>
<tr>
<th>Mode</th>
<th>Description</th>
<th>Examples</th>
<th>Mobility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mode 1</td>
<td>Cross-Border Supply</td>
<td>Distance learning, online, franchising</td>
<td>Programme mobility</td>
</tr>
<tr>
<td>Mode 2</td>
<td>Consumption Abroad</td>
<td>Students travel to other countries</td>
<td>Student mobility</td>
</tr>
<tr>
<td>Mode 3</td>
<td>Commercial Presence</td>
<td>Branch campus, joint venture, investment</td>
<td>Institution mobility</td>
</tr>
<tr>
<td>Mode 4</td>
<td>Movement of Natural Persons</td>
<td>Faculty, researchers move to other countries</td>
<td>Academic mobility</td>
</tr>
</tbody>
</table>


Mode 2 has been the most common mode for centuries, though not in the framework of trade, while, mode 1 is expanding fast. However, most of the contentious debates and conflicting interest have concerned Mode 3. In this mode, maximum number of ‘restrictions’ and ‘limitations’ under ‘market accesses’ are specified by the member countries which make commitments.

Table 4.4: Classification of Education Services under GATS and Four Modes of Supply

<table>
<thead>
<tr>
<th>Sub-sector of Education Service</th>
<th>Mode</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cross-border supply</td>
</tr>
<tr>
<td>Primary Education</td>
<td>Children attending classes abroad</td>
</tr>
<tr>
<td>Secondary Education</td>
<td>Students attending summer school/ language courses etc. abroad</td>
</tr>
<tr>
<td>Higher Education</td>
<td>E-education: virtual universities</td>
</tr>
<tr>
<td>Adult Education</td>
<td>Providing language schools</td>
</tr>
<tr>
<td>Other Education</td>
<td></td>
</tr>
</tbody>
</table>

Source: Deodhar (2002).
Mode 4 is also in use by some and is regarded as having potentially a strong market. The several modes involve a change in not only the nature and content but also the transaction processes of education— from conventional university systems and accredited degrees to distance education, e-learning, and non-accredited diplomas and degrees (Tilak, 2011). Given the four modes and five types/levels of education, one can thus get 20 \((5\times4)\) types of trade in education (Table 4.4).

In each of these modes, exceptions can be made under the conditions of Market Access and National Treatment. Thus, under any of the modes of trade in educational services, India will have to make specific commitments for opening up, purpose changes, and list specific educational services for negotiations and while doing this, it must ensure that the safeguard instruments available in the GATS documents are credible and enforceable (Deodhar, 2001).

4.8 Trade Barriers in Educational Services

The purpose of GATS is to liberalize trade, i.e., to reduce or eliminate restrictions and barriers in order to promote further trade (Knight, 2006). There are some barriers that are applicable to all sectors, while other barriers are specific to the education services sector (see Table 4.5 given below). The most important barriers that need to be removed in general and education in particular are the prohibitory laws against foreign providers. Other barriers are lack of transparency with respect to regulatory policies, procedures, subsidies and overall financing; unfair and discriminatory use of domestic laws and regulations; long procedural delays in according approvals; and discriminatory tax treatment (Tilak, 2011). The negotiations to deal with the Market Access and National Treatment (or specific commitments) for trade in education services are presently incomplete, where the negotiations should aim for, as per the GATS guidelines, removing the trade barriers in all the modes of supply. By 31st March 2003 the initial offers for market access has to be made and by 1st January 2005 a single understanding has to be reached (Bhagavatula, 2002). Thus, the regulatory mechanism under the GATS regime is critically grounded on the basic principles of most favoured nation treatment, national treatment, and market access.
Table 4.5: List of Barriers to Trade in Higher Education Services

<table>
<thead>
<tr>
<th>Modes</th>
<th>Barriers</th>
<th>Barrier Types</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mode 1 Cross-Border Supply</td>
<td>Restrictions on import of electronically produced educational material</td>
<td>Invisible</td>
</tr>
<tr>
<td></td>
<td>Restrictions on electronic transmission of course material</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Non-recognition of degrees obtained through distance mode</td>
<td></td>
</tr>
<tr>
<td>Mode 2 Consumption Abroad</td>
<td>Restriction on travel abroad based on discipline or area of study</td>
<td>Invisible</td>
</tr>
<tr>
<td></td>
<td>Foreign exchange control (limitations)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Quota on the number of students proceeding to a country or institution</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Prescription of minimum standards or attainments</td>
<td></td>
</tr>
<tr>
<td>Mode 3 Commercial Presence</td>
<td>Insistence on a local partner</td>
<td>Invisible</td>
</tr>
<tr>
<td></td>
<td>Insistence that the provider be accredited in the home country.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Insistence on partner/collaborator being from the formal academic stream</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Insistence on equal academic participation by foreign and local partner</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Disapproval of franchise operations</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Restrictions on certain disciplines/areas programs that are deemed to be</td>
<td></td>
</tr>
<tr>
<td></td>
<td>against national interests</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Limitations on foreign direct investment by education providers</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Difficulty in approval of joint ventures</td>
<td></td>
</tr>
<tr>
<td>Mode 4 Presence of Natural Persons</td>
<td>Visa and entry restrictions</td>
<td>Invisible</td>
</tr>
<tr>
<td></td>
<td>Restrictions on basis of quota for countries and disciplines</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Nationality or residence requirements, language</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Restrictions on repatriation of earnings</td>
<td></td>
</tr>
</tbody>
</table>

Source: Knight (2006).

4.9 GATS Commitment for Trade in Education Services

Commitments under GATS are characterized by high degree of discretion and flexibility. Members make Market Access and National Treatment commitments in each 4 modes, totaling 8 commitments in each activity. Commitments are Sectoral (meaning made in sectors which members are willing to table for negotiations) and Horizontal (made across all sectors that have been committed). Again these commitments can be categorized into Full (meaning no restrictions are imposed), Partial (meaning that some limitations are imposed) and Unbound commitments (meanings no commitments are made)\(^{28}\), which essentially means that the mode concerned is not allowed. GATS provide that, while making commitments nations have the right to prescribe limitations on National Treatment and Market Access.

The WTO members are supposed to mention in their schedules about trade liberalization i.e., the commitments regarding their offers to the other trading partners. In service trade the offer are made separately for each service and is unlike the trade

\(^{28}\) Retrieved from www.cuts-citee.org/ppt/STNC-1.ppt
agreement on goods where offers are made horizontally. In the following overview of commitments, the level of sectoral coverage will be discussed separately from the level of modal coverage. In turn, modes 1, 2 and 3, where access is determined mainly by sector-specific commitments, will be addressed separately from mode 4 (Lim, & Saner, 2011).

**Sectoral Coverage:** Education, at present one of the least committed services sectors, due to recognition of its ‘public good’ element and the high degree of government involvement in its provision (WTO, 2001). Overall, 185 commitments in a total of fifty-one schedules have been taken in education services. The number of commitments in the education sub-sectors is fairly evenly distributed (see Appendix 4.4 for a full breakdown of commitments taken by members), with the exception of ‘other education’, which is committed in only twenty-six schedules. Thirty-five on ‘Primary education’, forty-one on ‘Secondary education’, forty-two on ‘Higher education’ and forty-one on ‘Adult education’. A breakdown of the commitments between the five sub-sectors of education is given in Table 4.6.

**Table 4.6: Breakdown of Specific Commitments in Education Services by Sub-Sector**

<table>
<thead>
<tr>
<th>Sub-Sector</th>
<th>Number of Schedules with Commitments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary education</td>
<td>35</td>
</tr>
<tr>
<td>Secondary education</td>
<td>41</td>
</tr>
<tr>
<td>Higher education</td>
<td>42</td>
</tr>
<tr>
<td>Adult education</td>
<td>41</td>
</tr>
<tr>
<td>Other education</td>
<td>26</td>
</tr>
<tr>
<td><strong>Total number of commitments</strong></td>
<td><strong>185</strong></td>
</tr>
</tbody>
</table>


In Asia, China is the only country, which has extended its commitments to liberalize access in all five sub-sectors of education services. Except Thailand, the rest of Asia-Pacific countries have already extended their commitments in higher education services (see, Appendix 4.4). Developed countries have tended to make more wide ranging commitments in education services than developing countries. However, there is an overall sense of disappointed in the progress made to date in the number of countries that have tabled offers, the degree of liberalization offered and
the number of sectors committed. The unexpected low level of commitments is a deep concern, prompting much work to develop new and alternative means of encouraging countries to prove their offer in trade in education services.

**Modal Coverage:** While examining the modal coverage of commitment in education sector, it can be seen that most of the commitment under mode 1 (cross-border supply) are unrestricted, particularly in the case of higher education where over two-thirds of all existing commitments are without limitations. The few partial commitments on this mode are mainly owing to scheduling of sector-specific limitations such as restrictions on the granting of financial assistance for studies abroad, nationality requirements, and restricting the supply of the service only to foreign students in the country, etc. (Rehman, 2005). In this mode, the highest number of full commitments is found in higher education followed by adult education. The number of full commitments is lower in primary, secondary and other education.

Consumption abroad (mode 2) consistently accounts for a higher percentage of full commitments than modes 1 and 3 (see Table 4.7).

**Table 4.7: Percentage Breakdown of Full Commitments on Market Access According to Sub-Sectors and Modes of Supply (Mode 1 to 3)**

<table>
<thead>
<tr>
<th>Sub-sectors</th>
<th>Full Commitments (as a Percentage of Schedules with Commitments in the sub-sector)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mode 1</td>
</tr>
<tr>
<td>Primary Education</td>
<td>53</td>
</tr>
<tr>
<td>Secondary Education</td>
<td>44</td>
</tr>
<tr>
<td>Higher Education</td>
<td>67</td>
</tr>
<tr>
<td>Adult Education</td>
<td>61</td>
</tr>
<tr>
<td>Other Education</td>
<td>48</td>
</tr>
</tbody>
</table>

Source: (1) WTO Secretariat.

Commitments on mode 2 are mostly unrestricted and the few partial commitments that exist are subject to similar limitations as in mode 1 (Chandra, 2003). In contrast, most of the commitments on mode 3 are partial (ibid). However, the pattern of commitment is rather mixed. Regarding limitations on commercial presence, there are some examples, which are specific to education services are restrictions on: financial assistance for studies at non-certified/recognized institutions,
the granting of state-recognised diplomas/degrees by private intuitions, and access for publicly funded institutions. Other, limitation related to authorization or licensing requirements, type of legal entity, real estate acquisition and participation of foreign capital. Commitments regarding mode 4 (presence of natural persons) are largely similar to those for other sectors, guaranteeing entry for certain categories of persons, subject to particular conditions on durations. As with other sectors, there are few sector-specific limitations with respect to mode 4. Where such limitations exist, they typically specify the type of qualifications that the service supplier must possess, as well as nationality and residence requirements (Lim & Saner, 2011).

Thus, Sectoral and Modal commitment shows that most of the commitments are made in the higher education sector. This is because higher education (including professional, technical and vocational education) has a direct link with the global job market and hence greater private interest. But the state interest in higher education is much greater, since it has greater public policy objective. Whether good or bad, liberalization will affect the state’s reproduction of knowledge.

The commitment of sectors and sub-sectors of various countries depends upon countries comparative advantage in a given area. Hence, it can more or less be said that technological advance countries have the comparative advantage in trade in education services. The three largest exporting countries (the USA, UK and Australia), which are technologically advanced, account for more than 90 per cent of total education exports, in dollars terms though not necessarily in terms of number of students. These countries are showing keen interest in education services. Canada and New-Zealand account for the rest (Bashir, 2007). The USA is the leading exporter of education services and commands approximately 1/3rd of the total world market for higher education services. The negotiating proposal from the USA is that- education is basically a government function but private education should co-exist and not replace the former. It is an acceptable argument. However, it wants liberalization in education testing services, which it believes, is part of the concept of education. Australia also recognised that governments play a significant role in financing, delivery and regulation of education, either alone or in partnership with private or non-government organization. However, Australia also expressed confidence over internationalization of education. The country which shows most interest in
commitment is Japan. It offered commitment in Primary education, Secondary, Higher and Adult education service. New Zealand too sees a great opportunity in the GATS negotiations. It is the 4th largest service sector export in education services. Thus, internationalization of education, particularly higher education, has intensified quite independently of trade in education services within the GATS context.

4.10 India and Higher Education under GATS

At present, there is a widespread feeling that India is obliged under the WTO to open up its higher education sector to foreign providers, to end public subsidies, and to make a formal commitment to the GATS, although strictly speaking there is no obligation of any kind. Like many other countries, India faces the dilemma whether or not to commit its higher education to the WTO under the GATS (Tilak, 2006) or explore various alternatives, such as adopting selective approaches, either within the GATS framework or outside it, without making commitments under the GATS. This is indeed a serious dilemma, as the gains that one might get by making commitments on higher education under the GATS, such as having an internationally legally binding framework, may be overshadowed by the problems it raises. Despite many objections and many practical problems, India is still keeping final commitment to the GATS on education pending, education in India is already becoming internationalized, and trade is taking place under all the four modes, though not necessarily within the GATS framework (see Panchamukhi, 2008). It is however, interesting to note that a hundred percent (FDI) Foreign Direct Investment in higher education services on automatic route is allowed in India. Also foreign participation through twinning, collaboration, franchising and subsidiaries is permitted. This has happened by default and not due to any proactive policy stand taken by the government (Agarwal, 2006).

There are two sets of issues, which are considered separately even though they are closely related. The first refers to trading education, particularly allowing entry of foreign institutions into India (and allowing Indian institutions to go abroad), as well as attracting foreign students and other related aspects. The second relates to making a formal commitment on higher education to the GATS. The two aspects are related, since an environment that facilitates trade will help naturally in the process of making
formal commitments to the GATS. Many who do not clearly recommend making any offers to the GATS nonetheless argue in favour of trade in education (Tilak, 2011).

Since there are no formal agreement on education under GATS but trade in education under all four modes is gathering momentum in India. Indian society is quite diverse, with various kinds of public and private higher education institutions and a variety of political and economic actors, all having their own vested interests. While some public institution likes the Indian Institutes of Management and Indian Institutes of Technology, universities like the Indira Gandhi National Open University (IGNOU), public education bodies like the Central Board of Secondary Education (CBSE), and several private institutions are eager to export education- and, in fact, are already doing so- many others are not. Ministers and other organizations of commerce and trade such as the National Association of Software and Service Companies (NASSCOM), Confederation of Indian Industry (CII), and Federation of Indian Chambers of Commerce and Industry (FICCI) are keen on opening higher education for trade. The National Knowledge Commission (NKC) also favours it. While many of them favour expanding and even regulating trade in higher education, they do not necessarily argue for making commitment to the GATS (ibid).

Despite request from several countries like Brazil, Japan Australia, New Zealand, Norway, Singapore and the US, India has not yet made any offers in this sector during the new round of service trade negotiations launched under GATS in January 2000. These mainly focus on higher education, adult education, and other education services. USA also specified training services and educational testing services and Brazil has also requested in primary and secondary education services. Though, all requests made to India are for full market access and national treatment commitments in Modes 1, 2, & 3 (ibid). However, India has not made any offer in education services in the GATS 2000 round due to its sensitive public good nature. India has also been requested to put in place a transparent mechanism for the accreditation of programmes of study provided by foreign education service providers and an appeal process for redress of grievance. Most of the requests are to enter Indian market through commercial presence (Modes 3) of foreign establishments with

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30 Any good which is provided by the state, which is non-rival and non-excludable, termed as Public good or Social good e.g. public hospitals, parks etc.
stress being on the sectors of financial and telecommunication services although
offers in the field of education and environmental services has also been made. In
general, India was asked to make commitments with regard to transparency in
domestic regulations, simplify procedures, eliminate differential treatment of foreign
service providers, and facilitate the movement of natural persons under mode 4
(WTO, 2005; see also Agarwal, 2006).

While responding to these requests India made an initial offer in January 2004
that was not very much different from the offer in Uruguay round. The Department of
Commerce made an offer to the WTO under the GATS and included higher education
services in its revised offer of August 2005 (WTO, 2005). This offer includes all
modes of supply. Table 4.8 indicates that under modes 1, 2, and 3 it places no
limitations on national treatment, while horizontal commitments would be effective in
mode 4. India’s proposal demands liberalization in mode 4 mainly because of the
large possibilities of export of service providers from the information technology,
medicine, engineering, finance, education, architecture and construction industries as
also the entertainment and hospitality industries. India’s revised offer also tells us
that the country is more committed to liberalising higher education services (GOI,
2006). The Ministry of Human Resource development (MHRD) however, proposed
removal of education from the offer and the adoption of a cautious approach in this
regard in view of the likely problems it poses, including an influx of low quality
institutions and their effect on overall quality, the loss of freedom for the government
to make its own policies, and the absence of strong regulatory mechanism. MHRD
seems to be favouring export of education, and even importing education under Mode

31 In the revised offer, in which 11 sectors and 94 subsectors were covered as opposed to 7 sectors
and 47 subsectors in the initial offer made in January 2004, India ‘not only showed a willingness to
expand the scope of its Uruguay Round commitments by tabling several new services and sub-
sectors for negotiations, but also signalled that it was willing to remove commercial presence
restrictions in some key areas that it had already committed’ (Chanda, 2006). India has also
adopted the plurilateral approach, along with the USA and the EU, with a view to expediting the
discussions on services by bringing together a critical mass of countries that are the main
requesters and recipients of liberalization requests.

32 India, however, is not alone in demanding liberalisation of mode 4; there is also proposal put forth
on this by 14 developing countries jointly, which reiterates India’s position (NIEPA, 2002; WTO
2003).

33 Conflicting views and stands in this regard between the ministries of trade/commerce and
education within the country seem to be common. Argentina has had a similar experience, where
the ministry of education vetoed the proposal of the ministry of trade (see Verger, 2009). Thus a
government can have different players with conflicting interests, with the stronger players with
conflicting interests, with the stronger player winning the game (Jessop, 1990).
2, but not under Mode 3. The Department of commerce, on the other hand, lays stress on monetary gains from trade, including likely foreign direct investment. Despite the ‘offer’ and ‘revised offer’, no ‘final’ formal offer appears to have been made so far by the government of India to the GATS (Tilak, 2011).

One important political dimension, which needs to be looked into trade in services in India, is the centre-state relationship. The 42nd Constitutional (Amendment) 1976 put education in the concurrent list. Moreover, every state allocates a part of its public expenditure towards education and so does the centre. Every Indian state has its own education policies with its own state syllabus. In this context GATS will be seen with scepticism. The fact remains that, if the central government sign any international agreement then they are binding for all the states (Article-253). Centre always has to take the dynamics of the educational services of its states while negotiating under the GATS (Bhagavatula, 2002).

<table>
<thead>
<tr>
<th>Sector or Sub-sector</th>
<th>Modes of Supply</th>
<th>Limitations on Market Access</th>
<th>Limitations on National Treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Higher Education Services (CPC 923)</td>
<td>Mode 1 (Cross Border Supply)</td>
<td>None subject to the condition that service providers would be subject to regulations, as applicable to domestic providers in the country of origin</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td>Mode 2 (Consumption abroad)</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td>Mode 3 (Commercial Presence)</td>
<td>None subject to the condition that fees to be charged can be fixed by an appropriate authority and that such fees do not lead to charging capitation fees or to profiteering. Subject further to such regulations, already in place or to be prescribed by the appropriate regulatory authority. In the case of foreign investors having prior collaboration in that specific services sector in India, FIPB approval would be required.</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td>Mode 4 (Presence of natural persons)</td>
<td>Unbound except as in the horizontal section.</td>
<td>Unbound except as in the horizontal section.</td>
</tr>
</tbody>
</table>

Note: Revised offer dated August 24, 2005.

34 Article 253 of Indian constitution says that “Notwithstanding anything in the foregoing provisions of this chapter (Chapter 1, Part XI), Parliament has power to make any but for the whole or any part of the territory of Indian for implementing any treaty agreement or convention with any other country or countries or any decisions made at any international conference, association or other body”.
In sum, many countries have not made actual commitments on higher education under the GATS; but trade is already taking place under any or all of the four modes. Such trade is steadily growing, and all modes of trade are found to be affecting all aspects of higher education. For many countries, international education is largely of the ‘consumption abroad’. This is a very important mode of operation. At present, about 3.3 million students in the world study in a country other than their own (Tilak, 2011).

4.11 Conclusion

Services are considered as “an act or action, such as work rendered or performed for another”. In the last two decades, services sector have become the most dynamic segment of international trade and have emerged as the fastest growing sector of the global economy providing more than 71 per cent of global gross domestic product. In line with the global trend, service sector in India has also rapidly in the last decade, accounting for more than 56 per cent of domestic production.

An analysis of compound annual growth rate (CAGR) of service sector at global and national level reveals that for the period 1980-2011, India’s services exports grew at a compound annual growth rate (CAGR) of 14.29 per cent, while world exports of services have grown at the rate of 8.53 per cent only. Substantial part of this growth in India has been noticed during post-globalization period i.e., 21.27 per cent. India’s services imports grew at a CAGR of 12.98 per cent and world imports of services have grown at the rate of 7.92 per cent. In the 1980s and 1990s, India had a negative trade balance in services but from 2004 onwards, it has a positive trade balanced in services. This shows that, India has maintained a good position in the league of service exports and imports and has emerged as crucial economic activities in recent past. Thus, burgeoning services trade reflects India’s versatile service sector.

Today education has also become an important service, which not only adds value but also creates value in economic activity. It has become one of the single
largest service sectors in terms of shares in gross domestic product (GDP) and employment, in many economies worldwide. In this era of globalised world, education sector has become a trillion dollar industry. The developed countries have an edge over their counterpart or other developing countries because they have a comparative advantage in highly skilled labour force, relevant technologies and the ability to produce services of perceived high quality, which give them more space to trade in services. Though the developed countries wanted to bring trade in services under the legal framework of GATT, but the developing countries succeeded in putting trade in services in a separate legal framework under GATS.

In the WTO framework, there is an agreement on trade in services known as GATS. It covers all internationally traded services including education, within education; higher education is more amenable to trade than other levels of education because most of the trade in education services is in the sub-sector of higher education. Trade in education services is of increasing international significance, but the sector remains one of the least committed sectors among all other sectors of the GATS.

In spite of, WTO is in favour of trade in education service, there are certain barriers allowed to be maintained. Education is considered by most of the trading nations as a public good and it is the responsibility of the government to provide education at all the levels (significantly at higher level). Indian government, yet, has not made any formal statement on GATS so far as education is concerned. Being a member of WTO, it is committed to progressive liberalization but can take steps in this direction only after the economic, social and political ramifications are analysed and understood. While keeping in mind the national needs and ethos, India is not likely to make any commitments in the sub-sectors of education. If some commitments are made they will have to be accompanied by limitations that could be nation specific and even specific to areas/regions of India.

Countries across the world witnessed a spectacular growth in trade in higher education services over the past few years. Education services sector liberalization exerts an economy wide influence as they constitute strong inputs to all other economic activities, including trade. Traded educational services are already a major business in some countries like, USA, Australia, UK, Canada and New Zealand etc.
The USA is the leading exporter of educational services. The largest component of international trade in higher education services is study overseas. This trade has been established over many years, but a newer prospect is the widespread provision of courses and qualifications by providers originating from, and in some cases operating outside the country who stay at home. New information and communication technologies such as the Internet are creating rapidly the conditions that could allow such trade to flourish in the future. However, education services enjoy a closer link with the job market, which makes many industrialists and governments see a great market opportunity.